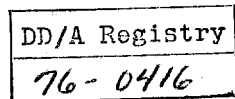
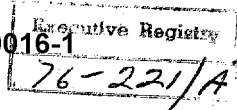


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27 JAN 1976

The Honorable Frank Church
Chairman, Select Committee to
Study Governmental Operations
With Respect to Intelligence Activities
United States Senate
Washington, D.C. 20510

Dear Senator Church:

In your letters of 14 January 1976 to me and the senior officials of this Agency, you posed a series of questions on the role and responsibilities of the Agency's General Counsel. In responding to your questions I have considered the opinions of all of these senior officials, including the General Counsel, but I feel it is appropriate for the Agency to make a single response through me. While these senior officials will not be responding individually, you should know that their thoughts and opinions on your questions are quite similar.

I hope that my answers to your questions are responsive and helpful to you in your deliberations.

Sincerely,

W. E. Colby

W. E. Colby
Director

Enclosure
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(1) The responsibilities of the Office of General Counsel

(a) The Office of General Counsel has usually played a passive role of evaluating the legality or propriety of activities upon request by others in the Agency. Should the General Counsel have the authority to initiate investigations similar to those undertaken by the Inspector General?

The General Counsel's role in evaluating the legality or propriety of activities has not been passive. It can only be said to be passive if one accepts a premise that the General Counsel has a primary investigative function. This is not a normal or desirable duty for a general counsel. The Inspector General is the Agency's investigative arm and carries out a continuing program of internal inspections. He is also available to perform investigations at the request of other offices, including the General Counsel, when matters within their jurisdiction require the development of information which can best be ascertained through professional investigative techniques. The General Counsel is of course free to conduct such inquiries as he thinks necessary in performing his duties and if a case should arise where he feels an investigation could better be conducted by his Office than the one which would normally be assigned the task he can be authorized by the Director to conduct such an investigation.

(b) As the Rockefeller Commission noted, the General Counsel performs a dual role -- he gives advice to the Director on the propriety and legality of CIA activities, while at the same time he is subject to pressure to find legal techniques to facilitate proposed activities. "Inside" counsel have often faced this situation. Is the nature of the CIA such that special arrangements need to be designed in order to deal with this question? Can there be a separation so that the first function, that of determining propriety, can be accomplished without the General Counsel being pressured to accommodate what is perceived as the Agency's needs? Can the General Counsel's role in determining the propriety and legality of particular activities be separated from his role as the Agency's chief legal officer? Should there be such separation? How might it be accomplished? Would a small legal staff attached to the Director's office which would only pass on the legality of proposals be desirable? Would the designation of a legal officer within the General Counsel's office who would perform the same function be helpful?

The so-called dual role of the General Counsel in advising on the propriety and legality of CIA activities and finding legal techniques to facilitate proposed activities is a normal one for any

general counsel, and for that matter, for any attorney. This is hardly a dual role. It is inherent in the lawyer's profession. To attempt to divide the function would be artificial and counterproductive. A "small legal staff" attached to the Director's office to pass on the legality of proposals would for practical purposes half duplicate the Office of General Counsel. To designate a small office within the General Counsel's Office, or even a staff, to perform a separate function of advising on the legality and propriety would be similarly inefficient and redundant.

(c) Are there particular legal questions, such as those involving allegations of wrongdoing, which the General Counsel's office should not have referred to it? Should the General Counsel be involved in the evaluation done by the CIA of the effect of a prosecution on the national security, foreign relations, intelligence operations, or sources and methods of intelligence gathering? What should the relationship be between the General Counsel and the Department of Justice in this area?

If the General Counsel is to be an effective legal adviser to the Director all Agency legal questions should be referred to him. He is in a unique position to weigh the effect of a prosecution on the national security and the Agency's operations and to advise the Department of Justice of the possible consequences of such a prosecution. There is no other officer in Government with the peculiar qualifications to see the operational, intelligence and legal considerations involved in such a situation, and he should and does maintain a professional relationship with the Department of Justice which permits him to assist the Department in making difficult prosecutorial decisions in such cases.

(d) Should the participation of the General Counsel or a member of the General Counsel's staff be required in planning, conducting, and evaluating any major CIA activity? Should this include field operations? Should members of the General Counsel's staff be assigned to each Directorate to assist in planning, conducting and evaluating projects? To whom should such staff members report? Are there particular CIA activities in which the General Counsel's participation should be required? What are they? Would they include all CIA activities within the United States or related to U.S. citizens? For instance, should the General Counsel's approval be required for the collection, storage, or transmittal of intelligence information on the domestic activities of U.S. citizens or organizations? Should the General Counsel's approval be required for the initiation of investigations of allegations of unauthorized disclosure of classified information? Should the General Counsel's approval be required

for the initiation of investigations relating to the security of CIA employees or facilities? Should the General Counsel's approval be required for any CIA surveillance within the U.S.? If the General Counsel's approval is not required, should such activities, nonetheless, be reviewed by the General Counsel? In what situations, if any, should written opinions of the General Counsel be required? In what situations should the CIA's General Counsel be required to obtain a legal opinion from the Department of Justice?

It would be unnecessary and unproductive to require the participation of the General Counsel or a member of his staff in the details of planning, conducting and evaluating every major CIA activity. The Office of General Counsel participates in the preparation of regulations and other guidelines which control major CIA activities and which provide for the active participation of or consultation with the General Counsel at appropriate stages of planning, conducting and evaluating such activities. This includes field operations.

Members of the General Counsel's Office should be and have been stationed overseas to provide legal advice and assistance to overseas installations when there is sufficient legal work in an overseas area to justify the assignment. The General Counsel is not a policeman or inspector and there is no need to have him in the field to "provide closer scrutiny of field activities."

An Assistant General Counsel is assigned to the Office of the Deputy Director for Operations and an Assistant General Counsel and an Attorney Advisor are assigned to the Office of Logistics of the Directorate of Administration. These assignments reflect a frequency of consultation and legal workload not generally found in other offices. A review of the need for legal assistance by the Directorate of Administration will be conducted soon with a view toward the possibility of assigning an attorney to that Directorate. Attorneys assigned to other offices or Directorates remain a part of the Office of General Counsel and, while working closely with the Deputy Director or office head concerned, continue to report to the General Counsel.

The principal requirement for the General Counsel's "participation" in CIA activities is and should be his active involvement in the preparation of regulations and guidelines for CIA activities and the provision within such regulations and guidelines for consultation with or approval by the General Counsel of certain activities or procedures. For example, the General Counsel approves all Agency regulations and project administrative plans. Assistance cannot be provided to another Government agency without his approval. Any information indicating the possibility of a criminal offense by an Agency employee must be reported to the General Counsel for his determination as to

whether it must be reported to the Department of Justice. There should be no need to consult the General Counsel in every instance before a particular activity such as the collection of information on U.S. citizens or the investigation of unauthorized disclosure of information can be conducted. The regulations and guidelines in which he has concurred set forth the limits in conducting such activities and the situations in which the General Counsel must be consulted.

There can be no self-actuating rule as to when written opinions of the General Counsel should be required. Certainly, they will be provided in cases of a major activity of which the legality or propriety has not previously been clearly established. Otherwise the General Counsel will provide written opinions or other record of his oral advice when in his judgment this is necessary or when the consulting office requests such an opinion. The General Counsel will seek a legal opinion from the Department of Justice in matters peculiarly within their jurisdiction, but in the normal course of events these situations will be rare and consultation with the Department of Justice, which is frequent, will not result in written opinions from the Department.

(e) Should the General Counsel be involved in determining the Agency's response to requests from other government agencies? The propriety, legality, and advisability of CIA requests to other government agencies?

Responses to requests from other Government agencies and general liaison with such agencies are provided for in Agency regulations which have been reviewed for legality by the General Counsel. The vast majority of requests from other agencies are routine and confined to particular professional or administrative subjects in which the General Counsel has no special expertise, and in which there is no legal question presented. Whenever the request from another agency is for a kind of assistance which has not previously been provided, and its legality clearly established, the General Counsel must be consulted in accordance with Agency regulations.

(f) What should the role of the General Counsel be in regard to the auditing of the expenditure of unvouchered funds? What should the relationship be between the Office of General Counsel and the Audit Staff?

The General Counsel should have no role in the auditing of the expenditure of unvouchered funds. This is clearly within the professional expertise of the Audit Staff. The General Counsel provides legal advice and assistance to that Staff as it does to other Agency components. His role in the review of expenditure of unvouchered funds is confined to questions of legality of expenditures which are most often raised by the Audit Staff itself.

(g) What should the General Counsel's relationship be to proprietaries and cover operations? Should a separate legal staff deal with these questions?

The General Counsel plays an active and continuing role in the creation and operation of proprietaries and in many aspects of cover operations. All administrative plans and amendments must be concurred in, as well as liquidations of proprietaries, either by the General Counsel or by private counsel selected or approved by him. Innumerable legal questions arise in the operation of proprietaries and in other cover activities on which the General Counsel must be and is consulted. There should not be a separate legal staff to deal with these questions, since they are so interrelated to the overall peculiar function of the Agency. However as a matter of fact, Agency legal questions involving proprietaries and cover operations are handled by one of the four divisions of the Office of General Counsel.

(h) What should be the relationship be (sic) between the General Counsel and the Inspector General? Should the General Counsel be required to review all reports of the Inspector General? Should the Office of General Counsel be subject to scrutiny by the Inspector General?

The relationship between the General Counsel and the Inspector General should be that of two professional offices with separate and distinct functions in which each from time to time needs the advice and assistance of the other. There would be no purpose served by the General Counsel reviewing all reports of the Inspector General. While the Office of General Counsel should not be exempted from the same scrutiny by the Inspector General as given to other offices, there is a question of the competence of the Inspector General to review the professional work of the Office. For this reason, other means have been used in the past. At one time a major New York law firm reviewed the Office of General Counsel and more recently, at the request of the General Counsel, the Department of Justice did a management survey of the Office.

(i) Should the General Counsel review all internal CIA regulations?

As previously noted, the General Counsel does review all internal CIA regulations.

(2) In your opinion, does the status of the General Counsel need to be changed? Does the General Counsel have sufficient access to the Director? Sufficient influence? Sufficient influence with other CIA officers.

The General Counsel's status is that of the head of an independent office under the DCI and, as such, he has complete access to the Director and strong influence with both the Director and other CIA officers. As such his rank should be equivalent to that of Deputy Directors, and I have agreed that it will be so changed.

(3) Should the General Counsel have access to all of the material produced by or in the custody of the Agency? If not, what limitations should exist? By whom and how should they be imposed?

The General Counsel in fact does have access to any material produced by or in the custody of the Agency, and if an office should question his request for access to any particular information any limitations would be imposed only by the Director.

(4) Should the DCI be assisted by a General Counsel for the Intelligence Community? If the position of Intelligence Community General Counsel were established, should the General Counsel of the CIA report to the Intelligence Community General Counsel rather than to the Director of the CIA?

No. A General Counsel for the Intelligence Community would be a position which could only duplicate the work of the individual General Counsels, but by an officer who would be handicapped by the lack of detailed knowledge of each of the agencies. There is need for consultation among the General Counsels of the various Community agencies, but this relationship exists both in direct dealings between counsels of two agencies and in informal meetings from time to time among the General Counsels of all the agencies. It would make no sense for the General Counsel of the CIA to report to an Intelligence Community General Counsel rather than to the Director of the CIA unless the DCI and the Director of the CIA were different individuals.

(5) Should the General Counsel be a Presidential appointee? Should senatorial confirmation be required? Should there be a fixed term for the General Counsel or for the staff in the Office of General Counsel? Should there be a periodic rotation of the General Counsel's staff, bringing in lawyers from other government agencies? Should the General Counsel be chosen from within the Agency? Should increased emphasis be placed on recruiting the staff of the Office of General Counsel from outside the Agency?

The General Counsel should not be a Presidential appointee, nor confirmed by the Senate. He should be someone appointed by the DCI in whom the DCI has confidence. A fixed term for the General Counsel or for his staff would be artificial and create many problems. There would be a loss in continuity and expertise if staff members could serve for only a limited time, and probably there would be great difficulty in recruiting competent and dedicated attorneys for limited appointments. For similar reasons periodic rotations of the General Counsel's staff would be counterproductive. For practical purposes with the increased staff of the Office of General Counsel, rotation will exist, as it does in other agencies, through attrition. Attorneys in the Office now have diverse backgrounds, from other components of the Agency, private practice, other government agencies, the legislative branch and military JAG.

(6) Given the lawyer-client privilege, should the Office of General Counsel be required to submit periodic reports to individuals or groups outside the Agency? To the NSC? To the PFIAB? To the Department of Justice? To the Congressional oversight committees? Is the nature of the CIA such that the need for outside reporting overrides the privilege? Who should have access to the General Counsel's written opinions?

Conditions of oversight provided for by the Congress through legislative oversight bodies and the Executive bodies should determine any review of the work of the Office of General Counsel as part of the review of the work of the Agency. Since the lawyer-client privilege is actually a privilege of the client which can be waived by him, and the client is the Director, this would not seem to be a consideration in any reporting by or review of the work of the Office. Access to the General Counsel's written opinions must be limited in the same manner as access to other sensitive Agency material.

(7) Should the General Counsel's responsibilities be fixed by CIA regulation? By Executive order? By statute?

It would seem artificial and needless to fix the General Counsel's responsibility by statute or Executive order. His responsibilities are and should be fixed by the Director and spelled out as necessary in Agency regulations.